

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DALE E. HARPER,)	
)	
Plaintiff,)	
vs.)	Case No. CIV-12-0449-HE
)	
JAMES RUDEK, ET AL.,)	
)	
Defendants.)	

ORDER

Plaintiff Dale Harper, a state prisoner appearing *pro se*, filed this civil rights action under 42 U.S.C. § 1983, and the matter was referred to a magistrate judge, consistent with 28 U.S.C. §636(b)(1)(B) and (C). Plaintiff has filed a motion for default judgment and a motion requesting the entry of default, which Magistrate Judge Suzanne Mitchell has recommended be denied. Plaintiff has objected to the Report and Recommendation.


Because the two defendants plaintiffs claims to be in default, Tracy McCollum and Nina Nagel-Silva, timely filed a motion to dismiss, the magistrate judge concluded that neither the entry of default nor default judgment was appropriate. The court agrees. Plaintiff's objection, based on the service of a pleading, Doc. #189, in another action, CIV-11-995-HE, does not demonstrate why either defendant is in default in this lawsuit.

Accordingly, the court adopts Magistrate Judge Mitchell's Report and Recommendation and denies plaintiff's motions requesting the entry of default [Doc. #78] and default judgment [Doc. #75]. As the magistrate judge suggests, the court also grants plaintiff an additional twenty (20) days within which to respond to defendants' motion to

dismiss [Doc. #70]. Plaintiff's response is due on or before **June 27, 2013**.

IT IS SO ORDERED.

Dated this 7th day of June, 2013.



JOE HEATON
UNITED STATES DISTRICT JUDGE